

Before the
Federal Communications Commission
Washington, D.C.

In the Matter of:

Request for Review of the Decision of the
Universal Service Administrator

East High School
Youngstown (Ohio) City School District
Board of Education

Schools and Libraries Universal Service
Support Mechanism

FCC Docket No. 02-6

Administrator Correspondence
Dated July 23, 2014

Request for Review and Waiver

Billing Entity No. 129631
Form 471 Application No. 566374
Funding Request No. 1562694

I. STATEMENT OF INTEREST

In accordance with §§54.719 through 54.721 of the Commission's rules, the Youngstown City School District Board of Education (YCSD) requests Federal Communication Commission (Commission) review of a decision of the Schools and Libraries Division of the Universal Service Administrative Company (Administrator), declaring YCSD to be in violation of §54.502(a)(4)(iii) of the Commission's rules (the "2-in-5 Rule"), and directing the recovery of funds from YCSD disbursed in Fiscal Year 2007, in the amount \$172,864.45. The record in this matter reflects that there is good cause for waiver of §54.502(a)(4)(iii). Further, the Administrator misapplied §54.502(a)(4)(iii) when the Administrator demanded recovery of funds disbursed in Fiscal Year 2007.

II. STATEMENT OF FACTS

In FY 2007, YCSD received \$172,864.45 in E-Rate funding discounts for East High School. In FY 2010, the Youngstown School District received \$30,488.87 in E-Rate funding discounts for East High School. In FY 2011, the Youngstown School District received \$60,816.92 in E-Rate funding discounts for East High School. (¶3, Affidavit of Genie Natale, attached, and Ex. A, captioned “Two in Five Year Tracking.”)¹

Ms. Natale, YCSD’s employee responsible for E-Rate matters, completed the application for E-Rate funding in FY 2011. She relied on the USAC “2-in-5 Tool for Internal Connections Eligibility Summary”, found on the USAC web site. USAC created this tool for school districts to use to track eligibility, and she followed it as required. The USAC website declared: “This tool will help you determine in which funding year an entity will be eligible for discounts on products and services.” (¶4, Affidavit of Genie Natale)

According to the USAC Eligibility Tool, East High School was eligible for E-Rate funding in 2011. Therefore, Ms. Natale applied for funds for East High School. She did not give the 2-in-5-Rule any additional thought; USAC told her that East was eligible. Ms. Natale took screenshots of the Eligibility List on October 20, 2010, as she submitted Youngstown School District’s E-Rate applications. (¶5, Affidavit of Genie Natale, and Ex. B, captioned “2-in-5 Tool for Internal Connections Eligibility Summary.”)

USAC never notified Ms. Natale or any other YCSD representative to not use or rely on the 2-in-5 eligibility tool. The online forms USAC provided for E-Rate application were processed by USAC for Youngstown’s FY 2011 application, including the request for East High

¹ The Affidavit of Genie Natale and its Exhibits A and B are attached to this Request for Review. For the convenience of the Commission, also attached are the June 13 2014 USAC Notification of Adjustment, June 27 YCSD Appeal to USAC, July 23 USAC denial, and August 14 USAC Demand for Payment.

School, without any problems or objections from USAC at the time. Nor was the FY2011 East High award ever brought up in any subsequent audit. Indeed, Ms. Natale did not learn there was a problem with East High School for over three and a half years, when she received the June 13, 2014 "Notification of Commitment Adjustment" letter from USAC. . (§ 7, Affidavit of Genie Natale.)

Ms. Natale sought an E-Rate discount for East High School for FY 2011, because she relied on the USAC 2-in-5 Eligibility Tool which declared that East High School was eligible for the program. USAC granted the funding without objection. (§ 6, Affidavit of Genie Natale.)

Forcing the District to send \$172,864.45 out of its general revenue fund to USAC is contrary to the USAC instructions that were followed and relied on by Ms. Natale in FY 2011. It would also be contrary to USAC's approval of the FY 2011 funding. (§ 8, Affidavit of Genie Natale.)

Forcing the District to send \$172,864.45 out of its general revenue fund to USAC will have very significant consequences for the District. The residents of the Youngstown City School District are some of the poorest in Ohio. About 90% of District students qualify for free or reduced price lunch. This unanticipated and unexpected payout would certainly impair the District's ability to educate its children. (§9, Affidavit of Genie Natale)

III. QUESTIONS PRESENTED FOR REVIEW

Question One - Should a public school district be subject to recovery of funds for violation of 47 C.F.R. §54.502(a)(4)(iii), the 2-in-5 Rule, where the violation is directly attributable to errors made in reliance on information provided by the Universal Service Administrative Company?

Question Two - If a public school district is subject to recovery for violation of the 2-in-5 Rule, from which fiscal year should the amount be recovered?

Response to Question One

A public school district should not be subject to recovery of funds for violation of 47 C.F.R. §54.502(a)(4)(iii), the 2-in-5 Rule, where the violation is directly attributable to errors made in reliance on information provided by the Universal Service Administrative Company.

It is well settled that the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

The Commission has recently reaffirmed that the E-rate program must maintain its historic focus on poverty in distributing support. *FCC Release No. 14-99*, ¶ 87. By any measure, the YCSD is poverty-stricken. In 2012, the mean federal adjusted gross income of taxpayers in the YCSD ranked 612 out of the total 614 school districts in Ohio.² In November 2011, Youngstown had the highest concentrated poverty rate among core cities in the United States' 100 largest metropolitan areas.³ Over 90% of the students enrolled in the YCSD receive a free or reduced price lunch. Recovery of \$172,864.45 for a discount received in FY 2007 will

² www.tax.ohio.gov/tax_analysis/tax_data_series/individual_income/publications_tds_individual/Y2TY12.aspx

³ www.vindy.com/news/2011/nov/03/youngstown-leads-nation-poverty-rate-497/

certainly impair the YCSD's ability to educate the children of Youngstown. (§9, Affidavit of Genie Natale)

There can be no dispute that USAC erroneously informed the YCSD that East High School was eligible for E-Rate funding in FY 2011; that YCSD relied on that information and sought funding for East High School in FY 2011; and that YCSD received \$60,816.93 for East High School in FY 2011. These are certainly special circumstances that warrant deviation by the Commission from its 2-in-5 Rule. Given the extreme poverty of the YCSD, deviation will serve the public interest. Moreover, an appropriate general standard that obviates a discriminatory approach is easily discerned in this matter. A poverty-stricken school that relies on the specific assurance of the Administrator that it is eligible for E-Rate funding should be able to rely on that assurance. Therefore, application of the 2-in-5 Rule to YCSD's receipt of the E-Rate discount for East High School in FY 2011 should be waived.

Response to Question Two

When a public school district is subject to recovery for violation of the 2-in-5 Rule, when the violation is not waived in whole or in part, the amount to be recovered should be allocated from the fiscal year with the smallest grant amount.

In FY 2007, YCSD received a total of \$172,864.45 in E-Rate funding for East High School.

In FY 2010, YCSD received \$30,488.87 in E-Rate funding for East High School. In FY 2011, YCSD received \$60,816.92 in E-Rate funding for East High School.

47 C.F.R. §54.502(a)(4)(iii) declares, in pertinent part:

Each eligible school or library shall be eligible for support for internal connections services, except basic maintenance services, no more than twice every five funding years. For the purpose of determining eligibility, the five-year period begins in any funding year in which the school or library receives discounted internal connections services other than basic maintenance services.

The rule is silent regarding consequences, if any, associated with noncompliance. To discern appropriate consequences, the Commission should look to the reasons for establishment of the E-Rate program. The Commission has declared that the E-Rate program should focus on poverty in distributing support. Given the poverty found within the YCSD, the Commission should focus on minimizing the financial impact of any penalty associated with violation of the 2-in-5 Rule. If recovery of some amount from YCSD must be required, then recovery of the smallest amount is appropriate, and the Commission should direct that the \$30,488.87 received by the YCSD for FY 2010 be recovered.

Alternatively, the Commission may determine that the violation of the 2-in-5 rule occurred upon receipt of the 3rd grant, and so declare the amount of the 3rd grant to be recovered. In YCSD's case, the Commission would then direct recovery of \$60,816.93, the amount that YCSD received for East High School in FY 2011, the 3rd grant in 5 years received by East High School.

In no event should more than \$60,816.93 be recovered. 47 C.F.R. §54.502(a)(4)(iii) does not authorize the Administrator to seek recovery of the first in 5 of E-Rate grants, or the largest in 5 of E-Rate grants. Instead, the 2-in-5 rule simply declares that a school can be eligible no more than 2 in 5 years.

IV. RELIEF SOUGHT

For the reasons stated herein, YCSD requests that application of the 2-in-5 Rule be waived as applying to East High School in the period FY 2007 to FY 2011. Alternatively, if waiver is not granted in whole or in part, YCSD believes that the Commission should direct recovery of the smallest amount of the three E-Rate grants received by East High School in the five year period, or recovery of the amount of the 3rd E-Rate grant, but no more.

Respectfully submitted,
Roth Blair Roberts Strasfeld & Lodge


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Attorneys for the Youngstown City School District
Board of Education

CERTIFICATE OF SERVICE

A copy of the foregoing REQUEST FOR REVIEW AND WAIVER was served on the Administrator Universal Service Administrative Company, at Appeals, Schools and Libraries Program Correspondence Unit, 30 Lanidex Plaza West, PO Box 685, Parsippany, NJ 07054-0685, by U.S. Mail, postage prepaid, and by email to appeals@sl.universalservice.org, on this 18th day of September, 2014:


Edward L. Ostrowski, Jr. (0068878)

Attorney for the Youngstown City Schools Board of
Education

STATE OF OHIO)
)
) SS: Affidavit of Genie Natale
COUNTY OF MAHONING)

1. I am the Manager of Educational Technology for the Youngstown City School District. I have held this position since 1995. As Manager of Education Technology, I have overseen the Youngstown School District's participation in the E-Rate program since 1998.
2. The Youngstown School District currently in Federal Fiscal Year 2015 operates 16 entities eligible for E-Rate funding. In Federal Fiscal Year 2007, the Youngstown City School District operated 27 different entities eligible for E-Rate funding.
3.
 - a. In Federal FY 2007, the Youngstown School District received a total of \$172,864.45 in E-Rate discounts applied to East High School.
 - b. In Federal FY 2010, the Youngstown School District received a total of \$30,488.87 in E-Rate discounts applied to East High School.
 - c. In Federal FY 2011, the Youngstown School District received a total of \$60,816.92 in E-Rate discounts applied at East High School. (See attached Ex. A, captioned "Two in Five Year Tracking.")
 - d. E-Rate funding for East High School in FY 2011, resulted in East receiving a funding for 3 out of 5 years.
4. When I completed the application for E-Rate funding in FY 2011, I used the USAC "2-in-5 Tool for Internal Connections Eligibility Summary", found on the USAC web site. USAC created this tool for school districts to use to track eligibility, and I followed it as required. The USAC website declared "This tool will help you determine in which funding year an entity will be eligible for discounts on products and services."
5. According to the USAC Eligibility Tool in FY 2011, East High School was eligible for E-Rate funding. Therefore, I applied for funds for East High School. I did not give 2-in-5-Rule any additional thought, because USAC told me that East was eligible. As is my practice when submitting information via websites, I took screenshots of the Eligibility List on October 20, 2010, when I submitted Youngstown School District's applications. Those screenshots are attached as Ex. B, captioned "2-in-5 Tool for Internal Connections Eligibility Summary."

6. I sought an E-Rate discount for East High School for FY 2011 because I relied on the USAC 2-in-5 Eligibility Tool which declared that East High School was eligible for the program. USAC granted the funding without objection.
7. USAC never notified me or anyone else in Youngstown City Schools to not use or rely on the 2-in-5 eligibility tool. The online forms USAC provided for E-Rate application processed Youngstown's FY 2011 application, including the request for East High School, without any problems. Nor was the FY2011 East High award ever brought up in an audit. I did not learn there was a problem with East High School for over three and a half years, when I received the June 13, 2014 "Notification of Commitment Adjustment" letter from USAC.
8. Forcing the District to send \$172,864.45 out of its general revenue fund to USAC is contrary to the USAC instructions which I followed and relied on in FY 2011. It would also be contrary to USAC's approval of the FY 2011 funding.
9. Any such repayment will have very significant consequences for the District. The residents of the Youngstown City School District are some of the poorest in Ohio. About 90% of District students qualify for free or reduced price lunch. While our Treasurer has managed our books well enough to pay the bills through the end of the fiscal year, this unanticipated and unexpected payout would certainly impair the District's ability to educate our children

Further Affiant sayeth naught.

Genie Natale
Genie Natale

Sworn and subscribed in my presence on this 18th day of September, 2014.



BETH A. LABERTO
Notary Public, State of Ohio
My Commission Expires March 16, 2019

Notary

Beth A. Laberto
My Commission Expires 3/16/2019

TWO-IN-FIVE YEAR TRACKING

FOR EAST HIGH SCHOOL ONLY														
2011 2011-12 Total Project	2011 2011-12 Discount	Vendor	471 #	FRN	2010 2010-11 Total Project	2010 2010-11 Discount	Vendor	471 #	FRN	2007 2007-08 Total Project	2007 2007-08 Discount	Vendor	471 #	FRN
\$67,574.37	\$60,816.93	DataServ, NW Upg	801864	2172854	\$22,983.16	\$20,684.84	DataServ, Wireless	728583	1971225	\$194,229.72	\$172,864.45	AT&T/SBC, East Elec.	566374	1562694
					\$5,245.45	\$4,720.91	DataServ, Call Mgr VM Upg	728654	1973917			Entire project was for East.		
					\$1,607.35	\$1,446.62	DataServ, dist maint	729268	2092081					
					\$922.95	\$830.66	DataServ, sw sub for Call Mgr VM Upg	729268	2092301					
					\$3,117.61	\$2,805.85	DBS, East Cabling	728749	1971656					
						\$30,488.87	TOTAL							
FOR WHOLE DISTRICT														
2011 2011-12 Total Project	2011 2011-12 Discount	Vendor	471 #	FRN	2010 2010-11 Total Project	2010 2010-11 Discount	Vendor	471 #	FRN	2007 2007-08 Total Project	2007 2007-08 Discount	Vendor	471 #	FRN
\$435,316.62	\$391,784.96	DataServ, NW Upg	801864	2172854	\$388,027.47	\$349,224.72	DataServ, Wireless	728583	1971225	\$194,229.72	\$172,864.45	AT&T/SBC, East Elec.	566374	1562694
					\$44,986.72	\$40,488.05	DataServ, Call Mgr VM Upg	728654	1973917					
					\$13,785.16	\$12,406.64	DataServ, dist maint	729268	2092081					
					\$7,915.52	\$7,123.97	DataServ, sw sub for Call Mgr VM Upg	729268	2092301					
					\$22,213.00	\$19,991.70	DBS, East Cabling	728749	1971656					
						\$429,235.08	TOTAL							

EXHIBIT

A

tabbles

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Universal Service Administrative Company

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2-in-5 Tool For Internal Connections Eligibility Summary

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Note: Pending appeals are not considered for the Internal Connection eligibility statuses listed below.

Entity	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
CHOFFIN CAREER AND TECHNICAL CENTER EN: 48738	Not Requested	Funded	Not Requested	Not Requested	Funded	Not Eligible	Eligible	Eligible	Eligible	Eligible
WILLIAMSON ELEMENTARY EN: 48763	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
CHANEY SENIOR HIGH SCHOOL EN: 48768	Funded	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
WILLIAM HOLMES MCGUFFEY ELEMENTARY EN: 48769	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
YOUNGSTOWN CITY SCHOOL DIST EN: 129631	Not Requested	Not Requested	Not Requested	Not Requested	Not Requested	Eligible	Eligible	Eligible	Eligible	Eligible
P ROSS BERRY MIDDLE SCHOOL EN: 227214	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
EAST HIGH SCHOOL EN: 227215	Not Requested	Funded	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
TAFT ELEMENTARY EN: 232194	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
HARDING ELEMENTARY SCHOOL EN: 232195	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
YOUNGSTOWN CITY SCHOOLS WAREHOUSE AND BUS GARAGE EN: 16020753	Not Requested	Not Requested	Not Requested	Not Requested	Not Requested	Eligible	Eligible	Eligible	Eligible	Eligible

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EXHIBIT**B****— 1 of 2 —**



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Note: Pending appeals are not considered for the Internal Connection eligibility statuses listed below.

Entity	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
YOUNGSTOWN CITY SCHOOLS EARLY COLLEGE EN: 16020927	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
I L WARD ADMINISTRATION BUILDING EN: 16024221	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
KIRKMERE ELEMENTARY SCHOOL EN: 16033625	Funded	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
MARTIN LUTHER KING ELEMENTARY SCHOOL EN: 16033627	Not Requested	Not Requested	Funded	Not Requested	Funded	Not Eligible	Not Eligible	Eligible	Eligible	Eligible
PAUL C. BUNN ELEMENTARY SCHOOL EN: 16033628	Not Requested	Not Requested	Funded	Not Requested	Funded	Not Eligible	Not Eligible	Eligible	Eligible	Eligible
ODYSSEY: SCHOOL OF POSSIBILITIES EN: 16035480	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible
VOLNEY ROGERS MIDDLE SCHOOL EN: 16045127	Not Requested	Not Requested	Funded	Funded	Not Eligible	Not Eligible	Not Eligible	Eligible	Eligible	Eligible
NEW WILSON MIDDLE SCHOOL EN: 16045128	Not Requested	Not Requested	Funded	Funded	Not Eligible	Not Eligible	Not Eligible	Eligible	Eligible	Eligible
RAYEN EARLY COLLEGE MIDDLE SCHOOL EN: 16058294	Not Requested	Not Requested	Not Requested	Not Requested	Funded	Eligible	Eligible	Eligible	Eligible	Eligible

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